

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3881 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ANILBHAI ZAVERBHAI PRAJAPATI

Versus

COMMISSIONER OF POLICE

Appearance:

Through Jail.

Mr.U.R.Bhatt, AGP for the respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 15/07/96

ORAL JUDGEMENT

Detenu Anil Zaverbhai Prajapati made an application on 8-4-96 to this Court , which has been treated by this Court as a petition, challenging the legality and validity of the order of his detention dated 23-2-96 passed under section 3 (1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as " the said Act") by the Commissioner of Police, Ahmedabad city (hereinafter referred to as "the detaining authority").

On 21st May 1996, this Court (Coram:K.J.Vaidya,J) directed to place the said application before the learned Vacation Judge for appropriation direction and simultaneously the detenu was directed to forward the copies of the grounds of detention, detention order and whatever other materials available with him so as to reach this Court on or before 20-6-96. In compliance with the said order, the detenu on 8th July, 1996 supplied the copies of the order of detention, grounds of detention and copies of other papers supplied to him by the detaining authority.

When this matter is called out to-day, Mr. U.R.Bhatt, learned Assistant Government Pleader, appearing for the respondents, has taken me through the order of detention, the grounds of detention and the statements of the witnesses .

Having perused the documents, it appears that the detaining authority has placed reliance on four cases registered against the detenu under the provisions of the Bombay Prohibition Act. Out of these cases, three cases are pending in the Court while one case is at the investigation stage. Over and above the same, reliance is also placed on the statements of two witnesses for the illegal and naferious activities alleged to have been carried on by the detenu . Considering this material, the detaining authority has recorded a finding that the detenu is a "bootlegger" within the meaning of section 2 (b) of the said Act and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, it was necessary to pass the order of detention against him and, therefore, the impugned order is passed. The detenu has, as stated above, challenged the said order of his detention from Jail.

The Supreme Court in Piyush Kantilal Mehta vs Commissioner of Police, Ahmedabad city AIR 1989 SC 491 has laid down as under:

"It may be that the detenu is a bootlegger within the meaning of S.,2 (b) of the Act, but merely because he is a bootlegger, he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-section (4) of S.3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order. A person may be very fierce by nature, but so long

as the public generally are not affected by his activities or conduct, the question of maintenance of public order will not arise. In order that an activity may be said to affect adversely the maintenance of public order, there must be material to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of an offence will not necessarily come within the purview of 'public order'..."

I have gone through the statements of the witnesses in the present case and , in my view, the facts in the present case are identical to the case before the Supreme Court and, therefore, the ratio laid down by the Supreme Court in the case of Piyush Kantilal Mehta (Supra) is applicable to the present case. Suffice it to say, the witnesses in the present case have alleged that the detenu, by indulging in use of force and violence and by illegal sale of liquor, has created an atmosphere of fear and terror by beating innocent citizens. It is also alleged that the detenu is indulging in anti-social activities and that the activities were against public order. Considering the statements of the witnesses, I am of the view that they are vague and general and no reliance can be placed on the same. In view of this observation, I am of the view that the subjective satisfaction arrived at by the detaining authority is not genuine and, therefore, the continuous detention of the detenu is vitiated.

Mr.U.R.Bhatt, learned Assistant Government Pleader, appearing for the respondents, however, submitted that the fact that these cases have been registered against the detenu , coupled with the fact that there are statements of the witnesses in support thereof that the detenu is engaged in manufacturing illicit liquor is sufficient to hold that there is likelihood of breach of public order. In the submission of Mr.Bhatt, with a view to preventing this manufacturing activity of illicit liquor, the detaining authority thought it necessary to detain the detenu. In view of the decision of the Supreme Court in Piyush Kantilal's case (supra) , it is not possible for this Court to accept the submission of Mr. Bhatt. Assuming that the allegation of the activity of manufacturing illicit liquor by the detenu is true, the same can , by no

stretch of imagination, be construed as causing breach of public order and, therefore, it cannot be said that the subjective satisfaction arrived at by the detaining authority for the purpose of passing the order of detention was genuine. Therefore, the continuous detention of the detenu is vitiated.

In the result, this petition is allowed. The impugned order of detention dated 23-2-1996 is quashed and set aside. The detenu Anil Zaverbhai Prajapati is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

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